

EXHIBIT 2

20DMD1

9/24/86

CONSTRUCTION, OPERATION AND
RECIPROCAL EASEMENT AGREEMENT

POUGHKEEPSIE GALLERIA
POUGHKEEPSIE, NEW YORK

This Construction, Operation and Reciprocal Easement Agreement (hereinafter referred to as the "REA") is made as of the ~~6th~~ day of October, 1986, by and among POUGHKEEPSIE GALLERIA COMPANY, a New York general partnership, ALSTORES REALTY CORPORATION, a Delaware corporation, THE MAY DEPARTMENT STORES COMPANY, a New York Corporation, and LECHMERE, INC. a Massachusetts corporation.

INTRODUCTION

I. Developer covenants, warrants and represents as follows:

(a) Developer owns in fee simple certain land situated in the Town of Poughkeepsie, County of Dutchess, and State of New York, more particularly described in Exhibit A, Part 4 (hereinafter called "Shopping Center Site") which is located as shown on the site plan dated July 31, 1986, as last revised on Sep. 18, 1986 (which is attached hereto as Exhibit B, the "Site Plan") and which shall be developed and otherwise improved as an enclosed mall regional shopping center, in accordance with the REA.

(b) The portion of the Shopping Center Site described in Exhibit A, Part 1 is referred to herein as the "Developer Parcel," and is located as shown on Exhibit B. The portion of the Developer Parcel legally described on Exhibit A, Part 14 is herein referred to as the "Caldor Tract," is located as shown on Exhibit B, is leased by Developer as lessor to Lechmere as lessee (the "Lechmere-Caldor Tract Lease"), and is in turn subleased by Lechmere as sublessor to Developer, as Sublessee (the "Lechmere-Caldor Tract Sublease"), by leases of even date.

(c) The portion of the Shopping Center Site described on Exhibit A, Part 2 is leased by Developer to Allied by that certain Lease of even date between Developer as Lessor and Allied as Lessee (the "Allied Lease"), is referred to herein as the "Allied Parcel" and is located as shown on Exhibit B.

all improvements thereon and therein, including all ground level parking, the Parking Deck, sidewalks, utilities, landscaping, etc.

• Section 1.5. Common Area Maintenance Cost

"Common Area Maintenance Cost" means all monies paid out for:

Reasonable costs and expenses actually incurred and directly relating to the operation, maintenance, management and repair of the Common Area in fulfilling Developer's obligations under Article 10 hereof, excluding however costs and expenses included within Enclosed Mall Operation and Maintenance Cost.

Common Area Maintenance Cost shall be determined in accordance with either (i) generally accepted accounting principles or (ii) cash basis accounting so as to reflect all cash receipts and disbursements. No capital expenditures shall be included in Common Area Maintenance Cost aggregating in excess of \$10,000 (in 1987 dollars) in any calendar year without the approval of Allied, Lechmere and May.

Common Area Maintenance Cost does not include any real estate taxes or assessments upon any portion of the Common Area.

Section 1.6. Common Area Work

"Common Area Work" means all of the work necessary to complete all improvements to be constructed under the terms of the Joint Improvement Agreement.

Section 1.7. Common Utility Facilities

The term "Common Utility Facilities" means those certain utility systems and facilities referred to and described in Section 3.1(1)(d) hereof.

Section 1.8 Developer Complex

"Developer Complex" means the Enclosed Mall, the Mall Stores and the Stores of the Majors (other than the Stores of May, Lechmere, and Allied); all of which are to be constructed by Developer pursuant to the terms hereof within the Permissible Building Areas therefor, except that the Caldor Store is to be constructed by Lechmere and Developer, as

herewith subjects Developer's reversionary fee interests in the Major Parties' Parcels to such easements.

(h) The grant of an easement to a Grantee shall benefit and bind its Parcel which shall, for the purpose of this REA, be deemed to be the dominant tenement (where only a portion of the Parcel is so benefited, only that portion shall be deemed to be the dominant tenement).

(i) Unless provided otherwise, all easements granted herein are non-exclusive and irrevocable.

(j) All easements herein shall be easements appurtenant and not easements in gross.

(k) No grant of easement pursuant to this Article 3 shall impose any greater obligation on any Party to construct or maintain its Store except as expressly provided in this REA.

(2) All easements granted hereunder shall exist by virtue of this REA, without the necessity of confirmation by any other document. Likewise, upon the termination of any easement (in whole or in part) or its release hereunder in respect of all or any part of any Parcel, the same shall be deemed to have been terminated or released without the necessity of confirmation by any other document. However, upon the request of any other Party, each Party will sign and acknowledge a document memorializing the existence (including the location and any conditions), or the termination (in whole or in part), or the release (in whole or in part), as the case may be, of any easement, if the form and substance of the document is approved by each Party.

Section 3.2. Easements for Use of Common Area

Each Party hereby grants to each of the other Parties easements in the Common Area on its (Grantor's) Parcel for:

- (1) ingress to and egress from the Grantee's Parcel; and
- (2) the passage and parking of vehicles; and
- (3) the passage and accommodation of pedestrians; and

- (4) the doing of such other things as are authorized or required to be done by Grantee on the Common Area of Grantor under this REA;

provided, however, that such easements are limited to such portions of the Common Area of the Grantor's Parcel as are now or hereafter from time to time set aside, maintained and authorized for such use pursuant to this REA, including those portions of the Common Area shown on Exhibit B.

Enjoyment of the easements granted by this Section shall commence on the date the Common Area in question is substantially completed.

Each Party hereby reserves the right to eject from the Common Area on its Parcel any Persons not authorized to use the same. In addition, each Party reserves the right to close off the Common Area of its Parcel for such reasonable periods of time as may be legally necessary (but only if absolutely necessary) in the reasonable opinion of its attorney to prevent the acquisition of prescriptive rights by anyone; provided, however, before closing off any part of the Common Areas as provided above, such Party must give notice to each of the other Parties of its intention to do so and must coordinate its closing with the activities of each of the other Parties so that no unreasonable interference with the operation of the Center occurs.

The easements provided for in this Section are subject to the rights to use the Common Area for other purposes provided for in this REA; however, except as otherwise herein specifically authorized, no changes shall be made in the Common Area or in location or design of Common Area Improvements prior to the Expiration Date.

The easements granted under this Section shall terminate on the Expiration Date of this REA, except as otherwise specifically provided herein.

Section 3.3. Easements for Access Roads and Ring Road

Each Party hereby grants to each of the other Parties perpetual easements in its Parcel for:

- (1) pedestrian and vehicular traffic in those strips of land on its (Grantor's) Parcel which are shown on Exhibit B as hatched roadways (hereinafter referred to as "Access Roads"), the widths of which

completing construction and opening early, but Lechmere's early completion of construction and opening shall not waive Developer's obligations hereunder.

ARTICLE 8
FURTHER REQUIREMENTS RELATING
TO CONSTRUCTION

Section 8.1. Minimum Floor Area and Initial Planned Floor Area

The Initial Planned Floor Area and the Minimum Floor Area of the Stores on the Tract(s) is as follows:

<u>Developer Complex</u>	<u>Initial Planned Floor Area</u>	<u>Minimum Floor Area</u>	<u>Tract</u>
Mall Stores	401,641	200,000	Enclosed Mall Mall Stores Tract
Penney Store	185,301	100,000	Penney Tract
Lechmere Store	77,337	60,000	Lechmere Tract
Caldor Store	86,443	60,000	Caldor Tract
Allied Store	125,288	100,000	Allied Tract
May Store	119,873	100,000	May Tract

Each Party shall initially construct as herein provided on the specified Tract at least 95% of the Initial Planned Floor Area of the Stores which it is required to construct.

May shall have the right (but not the obligation) at any time to construct or expand the May Store within the May Permissible Building Area. If May does construct any additional Floor Area, the Initial Planned Floor Area of the May Store set forth above in this Section 8.1 shall be changed to the total amount of constructed Floor Area of the May Store.

Any Party shall have the right to reconfigure its Permissible Buildings Area within the area designated on the Site Plan within which the Permissible Buildings Area may be reconfigured provided that the Permissible Building Area on a particular Tract as reconfigured shall not cover more area than the area covered by the Permissible Building Area designated for such Tract on the Site Plan.

Section 8.2. Construction of Developer Complex and May Store
by Developer

Developer covenants and agrees at its expense to design and construct the Enclosed Mall and the Mall Stores on the Enclosed Mall-Mall Stores Tract within the Permissible Building Areas shown on Exhibit B for such Improvements, with the exterior walls of the Mall Stores and the Enclosed Mall conforming to the building lines shown therefor on Exhibit B. The Mall Stores and the Enclosed Mall shall be on two levels, with a substantially equal number of square feet of Floor Area on each level of the two levels. The Mall Stores shall contain at least 95% of the Initial Planned Floor Area for the Mall Stores.

Developer further covenants and agrees at its expense to design and construct or cause to be designed and constructed the Penney Store and the remainder of the Caldor Store and, subject to the conditions and limitations set forth in this REA, and to construct the May Store in accordance with the following:

(a) The Penney Store shall be a two-level Store, shall be constructed on the Penney Tract within the Penney Store Permissible Building Area shown on Exhibit B, and shall contain at least 95% of the Initial Planned Floor Area of the Penney Store. The height of the Penney Store shall not exceed the height specified on Exhibit D for the Penney Store.

(b) The May Store shall be a two-level Store, shall be constructed on the May Tract within the May Store Permissible Building Area shown on Exhibit B, and shall contain at least 95% of the Initial Planned Floor Area of the May Store. The height of the May Store shall not exceed the height specified on Exhibit D for the May Store.

(c) The Caldor Store shall meet the criteria specified for the Caldor Store in Section 8.3(1) hereof.

Developer agrees to construct the Common Area Improvements and Common Area Work as provided in the Joint Improvement Agreement. Without limitation of the foregoing, the height of the Parking Deck shall not exceed the height specified on Exhibit D for the Parking Deck.

All construction by Developer shall be in accordance with approved Developer Complex Final Plans, or the Final Common Improvement Work Plans

elects to rebuild, replace or repair pursuant to Article 9 shall be conducted and completed with all due diligence and in all events be ready for occupancy within eighteen (18) months after such damage or destruction occurs. The Parties also agree that each Party shall comply with the requirements herein set forth with respect to initial construction with respect to its reconstruction.

Section 9.5. Clearing Debris from Razed Improvements

If a Party is not obligated hereunder to rebuild, replace or repair an improvement that has been damaged or destroyed, and if such Party elects not to do so, then it shall raze such improvement (or such part thereof that has been damaged or destroyed and is not being rebuilt) and clear the area of all debris. After the area has been cleared, it shall automatically become a part of the Common Area and landscaped or converted into Parking Area and shall be so improved by the Party performing the razing so as to be compatible with adjacent landscaping and/or Parking Area until such time as rebuilding may occur thereon. All activities that are performed by the Party razing the improvements and constructing the landscaping or Parking Area thereon shall be at such Party's sole cost and expense.

Section 9.6. Miscellaneous Repairs and Alterations

Subject to the preceding Sections of this Article and the other provisions of this REA, each Party may make such repairs, alterations, reconstructions or additions to its Improvements as it deems necessary or advisable under the circumstances.

ARTICLE 10
OPERATION, MAINTENANCE, REPAIR
AND RESTORATION -- COMMON AREA

Section 10.1. Maintenance of Common Area

Commencing with the opening by any Party of its Store for business and until the expiration of the period that Developer is required to operate by Section 12.1 hereof, Developer shall at its cost except as provided in the following sentence, operate, light, maintain and repair the Common Area and Common Area Improvements on each Party's Parcel (except to the extent a Party's Parcel is being maintained pursuant to Sections 10.8 or 10.12 hereof), excluding each Party's Perimeter Sidewalks which are each Party's individual responsibility to maintain as

provided in Section 9.1, in good order, condition and repair in accordance with the standards for first class regional shopping centers. Each Major Party shall pay to Developer therefor its Allocable Share of the Common Area Maintenance Costs, as provided in each Party's Allocable Share Agreement.

Section 10.2. Operation and Maintenance of Enclosed Mall

Commencing with the opening by Developer of the Enclosed Mall and until the expiration of the period that Developer is required to operate by Section 12.1 hereof (except to the extent that the Enclosed Mall is being maintained pursuant to Section 10.12 hereof), Developer shall light, operate, maintain and repair the Enclosed Mall, at its sole cost and expense, in good order, condition and repair in accordance with the standards for first class regional shopping centers. Developer shall have the right to receive such contributions for such cost and expense from the Major Parties as are provided for in the Allocable Share Agreements of such Major Parties.

Section 10.3. General Operation and Maintenance Standards

Without limiting the foregoing obligation of Developer to operate, light, maintain and repair the Common Area and Common Area Improvements, in good order, condition and repair in accordance with the standards for first class regional shopping centers, Developer shall perform and observe, without limitation, the following services and standards:

(1) Inspect, maintain, repair and replace all surfaces of the Common Area, keeping them level, smooth and evenly covered with the type of surface material originally installed thereon or such substitute therefor as shall be in all respects equal in quality, appearance and durability;

(2) Maintain the Common Area free of any obstruction, promptly remove all papers, debris, filth, refuse, surface waters, snow and ice from the Center (snow and ice which accumulated during the previous night is to be removed from the Parking Area by 9:00 a.m. on any business day that the Center is open for business, and snow and ice accumulating during the day when the Center is open for business shall be removed as promptly as possible), and wash and thoroughly sweep paved areas and other surfaces as required, using motor driven washing and vacuum cleaning vehicles where feasible;

(3) Maintain, replace and repair all Common Area entrance, exit and directional signs, markers and lights as shall be required so as to maintain same in an attractive condition and in accordance with the practices prevailing in the operation of first-class regional shopping centers;

(4) Clean lighting fixtures of the Center and relamp and reballast and replace as needed, except that each Party shall be individually responsible for maintaining, repairing and replacing its lighting fixtures installed pursuant to Sections 3.8 and 3.9 hereof.

(5) Repair and replace and repaint striping, markers, directional signs, etc., as necessary to maintain the same in good order, condition and repair in accordance with the standards for first class regional shopping centers;

(6) Light the Common Area as required by Section 10.6;

(7) Maintain, repair and replace landscaping (not including landscaping within the Perimeter Sidewalks around the Major Party's Stores and Developer Complex which shall be each individual Parties' responsibility and not part of Common Area Maintenance) as necessary to keep the same in good order, thriving condition and repair in accordance with the standards for first class regional shopping centers;

(8) Clean, maintain and repair signs of the Center (as contrasted with those of Occupants), including relamping and repairs being made as required, and cause all Occupants of the Developer Parcel to so clean and repair their signs;

(9) Maintain and keep in a sanitary condition public rest rooms, rest areas and other common use facilities and furnish necessary mosquito and other pest abatement controls;

(10) Clean, repair, maintain and replace as necessary and maintain in good order, condition and repair, all Common Utility Facilities, to the extent that the same are not cleaned, repaired, maintained or replaced by public utilities;

(11) Provide courteous personnel for Common Area traffic control and security and security patrol in such numbers and during such hours as reasonably prudent in order to (a) supervise traffic direction at entrances and exits to the Center during such hours and periods as

traffic conditions would reasonably require such supervision, and (b) patrol the Common Area, in each case as reasonably prudent to achieve safe and orderly flow of traffic and use of the Common Area by Permittees, but not less than that which is consistent with the practice prevailing in the operation of similar first class shopping centers;

(12) In accordance with the standards for first-class regional shopping center enclosed mall maintenance and operation, adequately light, heat, ventilate and air condition the Enclosed Mall during all hours that Developer is required to operate the Enclosed Mall and in any event at a minimum in accordance with the standards set forth in this REA, including Exhibits C and E and Section 4.5 hereof, and provide a fire protection system for the Enclosed Mall in accordance with this REA. Maintain the fire protection, heating, ventilating and cooling systems of the Enclosed Mall in good order, condition and repair, so that the same may be operated in accordance with the standards of this REA. Maintain in good order, condition and repair all other mechanical and electrical facilities in the Enclosed Mall, including, with out limitation, the lighting facilities, vertical transportation facilities, heating, ventilating and cooling systems, sprinkler systems, and actuated or manually operated doors; all in accordance with the standards set forth in this Section 10.3 and in Exhibits C & E, including by performing all necessary maintenance and repairs thereon, including, but not limited to, policing and performing the same type of services, where applicable, as are set forth in all the above and following subsections of this Section 10.3 with respect to the balance of the Common Area;

(13) Clean, maintain, repaint or otherwise refinish as necessary the structure, roof, skylights, doors, wall surfaces and all other surfaces and other appurtenances of the Enclosed Mall, giving particular attention to the ceiling areas surrounding the diffusers;

(14) Regularly clean and seal, wax or otherwise finish the Enclosed Mall floor as appropriate for the type of floor materials utilized;

(15) Absent an emergency situation Developer shall give May, Lechmere and Allied at least (5) days written notice of Developer's intent to conduct any construction on such Parties' Parcels or on the Access Roads and/or on the Ring Road, and in an emergency situation Developer shall give such notice as is feasible under the circumstances. All such construction shall be conducted as expeditiously as possible and

in such manner so as to minimize to the extent reasonably feasible interference with pedestrian and vehicular traffic;

(16) Empty all trash and rubbish containers located in the Common Area for the use of Permittees, wash the same at intervals sufficient to maintain the same in a clean and sanitary condition, and otherwise keep and maintain the same in an attractive and working condition;

(17) Rebuild, replace and repair Common Area Improvements which are damaged or destroyed by casualty in accordance with and to the extent required by Section 10.10;

(18) Faithfully observe, perform and enforce the provisions of Exhibits E and F with respect to the Developer Parcel.

Section 10.4. Indemnification of Parties

Each Party (Acting Party) shall indemnify and hold each of the other Parties and their Parcels harmless from all mechanic's, materialmen's and laborers' liens, and all costs, expenses, damages, claims and liabilities in connection therewith (including attorneys' fees) arising out of any activities performed by or on behalf of the Acting Party under this Article (whether performed before or after the signing of this REA).

If any Parcel becomes subject to any above-described lien, the Acting Party shall pay off the lien and cause the same to be released and discharged, within thirty (30) days after the filing thereof, subject also to the provisions of the following sentence. The Acting Party shall have the right to contest the validity, amount or applicability of any such lien by appropriate legal proceedings, and so long as it shall furnish bond or indemnity against such liens as shall be in excess of \$10,000, and defend as hereinafter provided, and be prosecuting such contest in good faith, the requirement that it pay and discharge such liens within said thirty (30) day period shall not be applicable; PROVIDED, HOWEVER, that in all events such Party shall within thirty (30) days after the filing thereof bond or indemnify against such liens in amount and form satisfactory to induce the title insurance company which insured title to the respective Parcel of each of the Parties hereto to insure over such liens or to reissue or update its existing policy, binder or commitment without showing any title exception by reason of such liens and provided further that within ten (10) days after the request of any Party, Developer shall, if Developer has not done so, in

addition bond any such liens in excess of \$10,000 so that such liens are deemed to be removed from record and so that the title insurance company will insure that same has occurred and that in all events the Acting Party shall defend, indemnify and save harmless the other Parties from all loss, damage, liability, expense or claim whatsoever (including attorney fees) resulting from the assertion of any such lien. In the event such legal proceedings shall be finally concluded (so that no further appeal may be had as of right) adversely to the Acting Party, such Acting Party shall within five (5) days thereafter cause the lien(s) (including any resulting judgment lien) to be discharged of record.

Section 10.5. No Provision

Section 10.6. Illumination of Common Area

During any period of darkness when any Major's Main Store is open for business and for at least one half (1/2) hour after such business hours and for such longer period thereafter as is necessary to permit safe ingress and egress from the Center by Permittees, Developer will keep all Common Areas on the Shopping Center Site open to the public and illuminated at full intensity, which lighting shall meet at a minimum the standards for illumination for open and deck parking set forth on Part V. G.6. and H.6. of Exhibit C hereto. Developer agrees that during the hours of darkness after the period that Developer is required to keep the Common Area illuminated for business as provided in the previous sentence, Developer will keep lighted all Common Area for security purposes seven (7) days each week such lights as will provide at least twenty-five percent (25%) of full intensity lighting uniformly distributed throughout the Common Area. Each Major Party shall reimburse Developer for such lighting as provided in its Allocable Share Agreement. If a Party requires lighting in addition to the lighting above required to be provided, Developer shall provide such additional lighting and shall be entitled to be reimbursed for the costs thereof by the Party requesting same. Such additional lighting costs shall not be part of Common Area Maintenance Costs.

Section 10.7. Failure of Performance

If a Party fails to perform any of its duties or obligations provided for in this Article 10, any other Party may at any time give a written notice to the Party thus failing, setting forth the specific failures to comply with Article 10; if such failures are not corrected within thirty (30) days after receipt of such notice, or if such failures

are such that they cannot be corrected within such time, then if the Party receiving such notice fails to promptly commence the correction of such failures within such period and to diligently prosecute the same to completion within a reasonably required period thereafter, then, in either such event, the Party giving such notice shall have the right to correct such failures, including the right to enter upon any Parcel to correct such failures, and the Party receiving such notice shall pay the costs thereof. Any amounts so expended may be withheld from amounts otherwise payable to the defaulting Party or collection may be sought otherwise and in any event the defaulting Party shall pay such amount with interest in accordance with Section 25.7; provided, however, these provisions shall be without prejudice to the Party receiving such notice to contest the right of the other Party to make sure repairs or expend such monies and to withhold such amounts. Notwithstanding anything in this Section 10.7 contained to the contrary, (1) in the event of an emergency situation, a Party may cure any such default after giving such notice as may be practicable under the circumstances, and, thereafter, shall be entitled to the benefits of this Section 10.7 and (2) no Party shall have the right, whether under this Section or otherwise, to enter upon the Floor Area in any Store to make any repairs or perform any maintenance.

Section 10.8. Right of Major Parties to Maintain Their Parcels

In the event that a Major Party has the right pursuant to Section 10.7 hereof to cure a failure by Developer in the maintenance of the Common Area (except if the right to cure is due to an emergency and the full cure period provided for a non-emergency default has not elapsed with the default not being cured) or in the event that a Major Party has given to Developer in any one year period at least three (3) notices that Developer is in default of its obligations under Article 10 for which a basis exists, such Major Party, by notice given to Developer not less than sixty (60) days before the date such Major Party intends to withdraw its Parcel from maintenance by Developer, may withdraw its Parcel from the maintenance and operation provisions herein prescribed for Developer, such withdrawal to be effective on a date selected by such Major Party in said notice after the end of said sixty (60) day period. After such withdrawal is effective, such Major Party shall not be required to pay any Common Area Maintenance Costs or estimates thereof. Any such withdrawal shall not affect the agreements of the other Parties with Developer or affect the withdrawing Party's agreement concerning the Enclosed Mall.

If a Party withdraws its Parcel under this Section, such Party shall, at its sole cost and expense, except as otherwise provided in its Allocable Share Agreement, perform all of the duties of Developer with respect to the maintenance of the Common Area and Common Area Improvements on its Parcel, including those duties set out in Section 10.3 and in the manner specified in Section 10.1.

Section 10.9. Request to Have Parcel Maintained by Developer

If a Party has withdrawn the Common Area and Common Area Improvements on its Parcel from the maintenance and operation of Developer, or if a Maintenance Association has been formed pursuant to Section 10.12 hereof, the withdrawing Party or the Maintenance Association may, upon sixty (60) days' notice to Developer, request to have the maintenance which was withdrawn from Developer be conducted again by Developer. If such request was made during the period that Developer is required to maintain the Common Area and/or the Enclosed Mall, whichever is applicable, pursuant to Sections 10.1 or 10.2, such request shall be honored by Developer and Developer shall resume the maintenance and operation of said Common Area and Common Area Improvements and the Enclosed Mall, as applicable, within sixty (60) days after said request provided such withdrawn party's Common Area and Common Area Improvements shall then be in a condition equivalent to the condition of the Common Area being maintained by Developer and at least to the standard required by the REA and such Party shall resume its payments for such maintenance by Developer in accordance with its Allocable Share Agreement.

Section 10.10. Damage to or Destruction of Common Area Improvements

If any Common Area Improvements on a Parcel (other than the Enclosed Mall, the reconstruction of which is provided for in Article 9 hereof) are damaged or destroyed by fire or any other casualty whatsoever which costs are in excess of Twenty-Five Thousand Dollars (\$25,000) to repair, whether insured or uninsured, the Party or Parties on whose Parcel(s) such damaged Common Area Improvements are located shall promptly rebuild and replace and repair such damaged or destroyed Common Area Improvements on its Parcel to the same (or better) condition and to the same (or better) general appearance as existed immediately prior to such damage or destruction. If Developer is then obligated to maintain the Common Area as provided in Section 10.1 and if the costs of repair are Twenty-Five Thousand Dollars (\$25,000) or less, Developer shall repair and restore same as provided in the previous sentence as part of Common Area

Maintenance. The Party responsible for the restoration of the Common Area Improvements shall promptly commence and diligently pursue the restoration of the Common Area Improvements which shall in all events be completed within six (6) months after such damage or destruction occurs, and, prior to commencing such rebuilding, replacement or repair, the reconstructing Party shall comply with all applicable requirements herein including, without limitation, those applicable to initial construction, as well as to all construction and those set forth in the Joint Improvement Agreement.

Section 10.11. Maintenance After Developer Obligation to Maintain

After Developer's obligation to maintain the Common Area expires, each Party shall maintain the Common Area on its Parcel and perform all functions which were heretofore the responsibility of Developer with respect to the Common Area and the Common Area Improvements on its Parcel, including those set out in Section 10.3 as provided in Sections 10.1 and 10.2.

Section 10.12. Maintenance Association

If at any time during the period specified in Sections 10.1 and 10.2 that Developer is required to maintain the Common Areas, Developer shall twice (2) in any twelve (12) month period default in the performance of its obligations under Article 10 and thereafter fail to cure such default within the cure period set forth in Section 10.7 then a Major Party shall have the right to cause a maintenance association (the "Maintenance Association") to be formed to conduct the maintenance of the Common Areas, including of the Enclosed Mall, and while such Maintenance Association is in existence such Maintenance Association shall be responsible for performing all of the obligations of Developer under Article 10 with respect to the Common Areas, including, without limitations, those obligations set forth in Sections 10.1, 10.2, 10.3, 10.4, 10.6 and 10.10 hereof (referred to as the "Maintenance Obligations"). During the period of time that the Maintenance Association is performing the Maintenance Obligations, Developer shall reimburse the Maintenance Association for all Common Area Maintenance Costs and Enclosed Mall Operating and Maintenance Costs, provided that Developer shall be entitled to be reimbursed by the Major Parties for such costs in accordance with each Major Party's Allocable Share Agreement. Notwithstanding the foregoing, a Major Party shall not have the right to cause a Maintenance Association to be formed in the event that either: (i) any three of: May, Allied, Lechmere, Caldor and Penney

shall not have each consented in writing to the formation of a Maintenance Association within ninety (90) days after the expiration of the applicable cure period for the second default; provided that if May, Lechmere, Penney, Caldor or Allied are no longer an occupant of the Center, another Major or Majors may consent in lieu of one of the foregoing Major or Majors, provided that at least three Majors consent; or (ii) in the event Developer shall, within 45 days after receipt of the second default notice, submit to arbitration pursuant to Article 20 the question of whether Developer is in default of its Maintenance Obligations as specified in such second notice, and pursuant thereto either (a) the arbitrators shall decide that Developer is not in default of its Maintenance Obligation or (b) the arbitrators shall decide that Developer is in default of its Maintenance Obligation and Developer thereafter cures the maintenance default within 30 days after notice of the arbitrator's decision or within such period as is reasonably required to cure such default thereafter, in the event that such default cannot be cured within the 30 day period and Developer has promptly commenced and diligently prosecuted the cure of the default within the 30 day period and continued thereafter to diligently prosecute the cure to completion; provided that (b) shall not be effective and Developer shall not be authorized to cure the default as provided in (b) to avoid a take over of maintenance by the Maintenance Association if the Arbitrators make a determination that Developer acted in bad faith with respect to such default.

ARTICLE 11

PARKING REQUIREMENTS

Section 11.1. Required Parking Ratio

Subject to Section 8.4 and to Condemnation, each Party shall maintain on each of its Tracts at least 5.5 ground level automobile parking spaces for every 1,000 square feet of Initial Planned Floor Area on each such Tract, except for the Floor Area of the theater, Developer shall maintain on the Enclosed Mall-Mall Stores Tract at least one (1) ground level automobile parking space for each four (4) seats in the theater. For purposes of the parking requirements the parking provided in the second level of the Parking Deck shown on Exhibit B shall be considered ground level parking. In addition to the foregoing parking requirements, in the event that the applicable governmental authority as of the date of this REA requires that a greater number of automobile parking spaces be provided, each Party shall maintain on each of its

concessionaires. Each Party shall require such Persons to use only the designated parking sections. No such employee parking area shall be provided within 300 feet of any public entrance of any Main Store or within 300 feet of the Enclosed Mall, without the consent of the Party on whose Parcel such Main Store or Enclosed Mall is located.

Section 11.3. Use of Parking Areas

Except as otherwise expressly provided herein, no Party shall use or permit the use of the Parking Area on its Parcel for any purpose other than pedestrian movement and the parking and passage of motor vehicles by Occupants and Permittees.

Section 11.4. Development of Additional Center Parking Parcel

The Additional Center Parking Parcel may be maintained by Developer in its natural condition provided that it is not unsightly, subject to Section 8.5, or it may be graded and landscaped and parking improvements may be provided thereon; all improvements thereon shall comply with the requirements of the Joint Improvement Agreement and the REA, including Section 11.1 and Exhibit C hereof, and all other requirements of the REA pertaining to construction and improvements on the Shopping Center Site. Subject to Section 8.5, no parking provided on the Additional Center Parking Parcel shall be utilized to satisfy the parking required to be provided on any Tract in the Shopping Center Site.

ARTICLE 12

OPERATING COVENANTS OF DEVELOPER

Section 12.1. General Operating Covenants

In addition to and not in limitation of any other covenants of Developer contained in this REA, Developer covenants and agrees that it will operate or cause to be operated the Developer Improvements and the balance of the Common Area in the following manner:

(1) To open and operate the Mall Stores and the Enclosed Mall and to cause to be opened and operated the Majors' Stores in accordance with the requirements of this REA, including without limitation, Sections 6.3, 6.4, 6.5, 8.2, 8.3, 12.1(4) and 12.1(9) hereof.

(2) To continuously manage and operate the Developer Complex (or cause the Complex to be continuously managed and operated) as a complex

periods shall not be extended by Unavoidable Delays, then Lechmere shall have the right in addition to any other right or remedy which it has to terminate its operating covenant by giving notice thereof to the other Parties.

Notwithstanding anything to the contrary, the covenants in this Section 13.3 shall not impose any greater obligation to rebuild, reconstruct or restore than as set forth in Article 9 of this REA.

ARTICLE 14

GENERAL COVENANTS - CENTER APPEARANCE

Section 14.1. Location of Buildings and Other Improvements on the Shopping Center Site

Each of the Parties covenants and agrees with each other that no building or buildings or improvements, other than Common Area Improvements, shall be erected, constructed, expanded or maintained on the Allied Parcel, May Parcel, Lechmere Parcel or Developer Parcel, except within the Permissible Building Areas designated therefor on Exhibit B as it may be reconfigured as provided in Section 8.1 and that no improvement shall be constructed on the Shopping Center Site that is not in conformance with Exhibit B.

Section 14.2. Size of Buildings

No building of any Major or Developer shall be constructed or expanded other than within the respective Permissible Building Area designated therefor on Exhibit B as it may be reconfigured as provided in Section 8.1 and other than as otherwise required or limited by this REA.

Section 14.3. Height Limitations

No building shall be constructed or expanded which exceeds the height limitations set forth for such building in Exhibit D. Roof top mechanical equipment shall be screened so as to be hidden from public view except for visibility from adjacent public streets and highways, which are level with, or higher than, the roof of the buildings on which such mechanical equipment is located.

(4) Any trailer court, mobile home park, lot for sale of new or used motor vehicles, labor camp, junk yard, stock yard or animal raising (other than pet shops and veterinarians provided that they do not otherwise violate the provisions hereof; e.g., noise or odor);

(5) Any dumping, disposal, incineration or reduction of garbage or refuse other than handling or reducing such waste if produced on the premises from authorized uses and if handled in a smokeless, odorless, clean and sanitary manner and without ambient noise levels;

(6) Any commercial laundry or dry cleaning plant, laundromat, veterinary hospital, car washing establishment, bowling alley, mortuary or similar service establishment; and

(7) Any automobile body and fender repair work.

Section 14.6. Non-Interference with Common Area

So as not to interfere with efficient automobile and pedestrian traffic flow in the Center, there shall be no storage, display, sale or solicitation of merchandise or services conducted in the Shopping Center except within Floor Area; provided, however, that with the written approval of all Parties, given or withheld in their respective sole and absolute discretion, there may be conducted by each Party upon its Parcel special Shopping Center-wide promotional events.

No use shall be made of, and no activity shall be conducted in the Common Area except for (i) the accommodation of pedestrians and motor vehicles and the use and maintenance of easements granted pursuant to Article 3, and (ii) such specifically approved (as provided in the previous paragraph) special Shopping Center-wide promotional events.

Section 14.7. Fences, Obstructions

No fence, structure or other obstruction of any kind (except as may be specifically permitted or required herein or as may be indicated on Exhibit B or except for decorative features and customer conveniences) shall be placed, kept, permitted or maintained upon the Common Areas.

Section 14.8. Signs

The criteria for all signs to be installed within the Shopping Center Site is set forth in Exhibit F, which sign criteria the Parties